

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the section regarding sentencing reform.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 151

To amend title 18, United States Code, with respect to
the sexual exploitation of children.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by

Viz:

1 On page 35, strike line 9 and all that follows through
2 page 36, line 10, and insert the following:

3 (a) ENFORCEMENT OF SENTENCING GUIDELINES
4 FOR CHILD ABDUCTION AND SEX OFFENSES.—Section
5 3553(b) of title 18, United States Code is amended—

6 (1) by striking “The court” and inserting the
7 following:

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), the court”; and

10 (2) by adding at the end the following:

1 “(2) CHILD ABDUCTION AND SEX OFFENSES.—

2 “(A) SENTENCING.—In sentencing a de-
3 fendant convicted of an offense under section
4 1201 involving a minor victim, an offense under
5 section 1591, or an offense under chapter 71,
6 109A, 110, or 117, the court shall impose a
7 sentence of the kind, and within the range, re-
8 ferred to in subsection (a)(4) unless—

9 “(i) the court finds that there exists
10 an aggravating circumstance of a kind, or
11 to a degree, not adequately taken into con-
12 sideration by the Sentencing Commission
13 in formulating the guidelines that should
14 result in a sentence greater than that de-
15 scribed;

16 “(ii) the court finds that there exists
17 a mitigating circumstance of a kind or to
18 a degree, that—

19 “(I) has been affirmatively and
20 specifically identified as a permissible
21 ground of downward departure in the
22 sentencing guidelines or policy state-
23 ments issued under section 994(a) of
24 title 28, taking account of any amend-

1 ments to such sentencing guidelines or
2 policy statements by Congress;

3 “(II) has not been taken into
4 consideration by the Sentencing Com-
5 mission in formulating the guidelines;
6 and

7 “(III) should result in a sentence
8 different from that described; and

9 “(iii) the court finds, on motion of the
10 Government, that the defendant has pro-
11 vided substantial assistance in the inves-
12 tigation or prosecution of another person
13 who has committed an offense and that
14 this assistance established a mitigating cir-
15 cumstance of a kind, or to a degree, not
16 adequately taken into consideration by the
17 Sentencing Commission in formulating the
18 guidelines that should result in a sentence
19 lower than that described.

20 On page 37, strike line 3 and all that follows through
21 page 38, line 3, and insert the following:

22 (b) CONFORMING AMENDMENTS TO GUIDELINES
23 MANUAL.—The Federal Sentencing Guidelines are
24 amended—

1 (1) in section 5K2.0—

2 (A) by striking “Under” and inserting the
3 following:

4 “(a) DOWNWARD DEPARTURES IN CRIMINAL CASES
5 OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—
6 Under”; and

7 (B) by adding at the end the following:

8 “(b) DOWNWARD DEPARTURES IN CHILD CRIMES
9 AND SEXUAL OFFENSES.—

10 On page 39, strike line 20 and all that follows
11 through page 43, line 4.

12 On page 51, between lines 13 and 14, insert the fol-
13 lowing:

14 “(4) The Commission shall make available to
15 the Attorney General, upon request, such data files
16 as the Commission may assemble or maintain in
17 electronic form that include any information sub-
18 mitted under paragraph (1). Such data files shall be
19 made available in electronic form and shall include
20 all data fields requested, including the identity of the
21 sentencing judge.”.

1 On page 56, strike line 14 and all that follows
2 through page 57, line 15, and insert the following:

3 (I) REPORT BY ATTORNEY GENERAL.—

4 (1) DEFINED TERM.—For purposes of this sec-
5 tion, the term “report described in paragraph (3)”
6 means a report, submitted by the Attorney General,
7 which states in detail the policies and procedures
8 that the Department of Justice has adopted subse-
9 quent to the enactment of this Act—

10 (A) to ensure that Department of Justice
11 attorneys oppose sentencing adjustments, in-
12 cluding downward departures, that are not sup-
13 ported by the facts and the law;

14 (B) to ensure that Department of Justice
15 attorneys in such cases make a sufficient record
16 so as to permit the possibility of an appeal;

17 (C) to delineate objective criteria, specified
18 by the Attorney General, as to which such cases
19 may warrant consideration of an appeal, either
20 because of the nature or magnitude of the sen-
21 tencing error, its prevalence in the district, or
22 its prevalence with respect to a particular
23 judge;

24 (D) to ensure that Department of Justice
25 attorneys promptly notify the designated De-

1 partment of Justice component in Washington
2 concerning such adverse sentencing decisions;
3 and

4 (E) to ensure the vigorous pursuit of ap-
5 propriate and meritorious appeals of such ad-
6 verse decisions.

7 (2) REPORT REQUIRED.—

8 (A) IN GENERAL.—Not later than 15 days
9 after a district court's grant of a downward de-
10 parture in any case, other than a case involving
11 a downward departure for substantial assist-
12 ance to authorities pursuant to section 5K1.1 of
13 the United States Sentencing Guidelines, the
14 Attorney General shall submit a report to the
15 Committees on the Judiciary of the House of
16 Representatives and the Senate containing the
17 information described under subparagraph (B).

18 (B) CONTENTS.—The report submitted
19 pursuant to subparagraph (A) shall set forth—

- 20 (i) the case;
21 (ii) the facts involved;
22 (iii) the identity of the district court
23 judge;
24 (iv) the district court's stated reasons,
25 whether or not the court provided the

1 United States with advance notice of its in-
2 tentions to depart; and

3 (v) the position of the parties with re-
4 spect to the downward departure, whether
5 or not the United States has filed, or in-
6 tends to file, a motion for reconsideration.

7 (C) APPEAL OF THE DEPARTURE.—Not
8 later than 5 days after a decision by the Solic-
9 itor General regarding the authorization of an
10 appeal of the departure, the Attorney General
11 shall submit a report to the Committees on the
12 Judiciary of the House of Representatives and
13 the Senate that describes the decision of the
14 Solicitor General and the basis for such deci-
15 sion.

16 (3) EFFECTIVE DATE.—Paragraph (2) shall
17 take effect on the day that is 91 days after the date
18 of enactment of this Act, except that such paragraph
19 shall not take effect if not more than 90 days after
20 the date of enactment of this Act the Attorney Gen-
21 eral has submitted to the Judiciary Committees of
22 the House of Representatives and the Senate the re-
23 port described in paragraph (3).

24 On page 57, after line 15, add the following:

1 (m) REFORM OF EXISTING PERMISSIBLE GROUNDS
2 OF DOWNWARD DEPARTURES.—Not later than 180 days
3 after the enactment of this Act, the United States Sen-
4 tencing Commission shall—

5 (1) review the grounds of downward departure
6 that are authorized by the sentencing guidelines, pol-
7 icy statements, and official commentary of the Sen-
8 tencing Commission; and

9 (2) promulgate, pursuant to section 994 of title
10 28, United States Code—

11 (A) appropriate amendments to the sen-
12 tencing guidelines, policy statements, and offi-
13 cial commentary to ensure that the incidence of
14 downward departures are substantially reduced;

15 (B) a policy statement authorizing a down-
16 ward departure of not more than 4 levels if the
17 Government files a motion for such departure
18 pursuant to an early disposition program au-
19 thorized by the Attorney General and the
20 United States Attorney; and

21 (C) any other conforming amendments to
22 the sentencing guidelines, policy statements,
23 and official commentary of the Sentencing
24 Commission necessitated by this Act, including

1 a revision of paragraph 4(b) of part A of chap-
2 ter 1 and a revision of section 5K2.0.

3 (n) COMPOSITION OF SENTENCING COMMISSION.—

4 (1) IN GENERAL.—Section 991(a) of title 28,
5 United States Code, is amended by striking “At
6 least three” and inserting “Not more than 3”.

7 (2) APPLICABILITY.—The amendment made
8 under paragraph (1) shall not apply to any person
9 who is serving, or who has been nominated to serve,
10 as a member of the Sentencing Commission on the
11 date of enactment of this Act.